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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,008	03/13/2007	Pratibhash Chattopadhyay	FER-15618.001.001	6289
7609 7590 04/02/2009 RANKIN, HILL & CLARK LLP 925 EUCLID AVENUE, SUITE 700 CLEVELAND, OH 44115-1405				
EXAMINER HUDA, SAIED M				
ART UNIT		PAPER NUMBER		
1791				
MAIL DATE		DELIVERY MODE		
04/02/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/552,008

**Applicant(s)**

CHATTOPADHYAY ET AL.

**Examiner**

SAEED M. HUDA

**Art Unit**

1791

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-5,7 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. The response filed on 01/28/2009 has been fully considered and entered into the record. Claims 2, 6, and 8-9 are cancelled.
2. The rejection for claim 9 is withdrawn due to cancellation of claim.

***Response to Arguments***

3. Applicant's arguments with respect to claims 1, 3-5, 7, and 10 have been considered but are moot in view of the new ground(s) of rejection, to the extent that the arguments are applicable to the new grounds of rejection; they are addressed below.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1, 3-5, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daitch et al. (US 6447991 B1) in view of Lee et al. (US 2002/0094318 A1).

- a. With regards to claims 1 and 10, Daitch et al. disclose an aerogel material doped with special bioaffinity compounds to providing means of unique collection, detection and identification of bioaerosols, including bacteria, viruses, toxins, and other bioaerosols (abstract). Daitch et al. disclose a method of regular (non-doped) aerogel production is the sol-gel process where a solution of silicate monomer (sol) undergoes polymerization to a gel (composite that has a

first material that is not soluble in a supercritical fluid and a second material that is soluble), as shown in FIG. 1. Specifically, an ethanol solution of tetraethoxysilane  $\text{Si}(\text{OCH}_2\text{CH}_3)_4$  in the presence of water, ethanol, and catalyst, undergoes partial hydrolysis and a condensation reaction to form a sol (a colloidal dispersion of particles in liquid). As the process of polymerization continues, a solid silicate network separates out of the solution (gel point). The solid is still "soaking" in the ethanol solution; this biphasic system is usually referred to as the alcogel. Subsequent removal of the liquid phase (second material) from the alcogel by supercritical drying (use of supercritical fluid), results in a low density, highly porous silica aerogel (column 3, lines 5-18). Daitch et al. fail to teach that the composite is in the shape of particles.

Lee et al. teach preparing highly porous, low density, micron sized aerogel particles ([0021]) and the use of a sol-gel process ([0028]) (similar to process and material used in Daitch et al.). Lee et al. also states that the particles would be in the size range of submicron up to about 2 microns ([0028]) (aerodynamic size range and geometric volume diameter). It would have been obvious to one having ordinary skill in the art at the time of the invention to use the process of Daitch et al. to form particles because this is an art recognized geometry as exemplified by the teaching of Lee et al.

b. With regards to claim 3, Daitch et al. teach that dopants are added at the alcogel stage and allowed to react with the surface silanols. This is followed by supercritical fluid extraction that will result in a surface modified "doped" aerogel

with a high-bio affinity receptor drug (column 3, line 40-47) (i.e. the aerogel is a pharmaceutical in nature and becomes a biological agent).

c. With regards to claim 4, Daitch et al. teach that a solid silicate network separates from the solution and that the solid is still "soaking" in the ethanol solution (fluidized bed) and subsequently removal of the liquid phase occurs by supercritical drying (column 3, lines 10-15). Daitch et al. in view of Lee et al. teach that this silicate network is actually a group of particles.

d. With regards to claim 5, the particles obtained from the modified invention of Daitch et al. in view of Lee et al. are suspended in ethanol solution where there is no recognition that the solvent is soluble in supercritical fluid (column 3, lines 10-17).

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Daitch et al. (US 6447991 B1) in view of Lee et al. (US 2002/0094318 A1) as applied to claim 1 above, and further in view of Chattopadhyay et al. (US 2004/0156911).

Daitch et al. in view of Lee et al. (US 2002/0094318 A1) disclose the use of a supercritical fluid; however, fail to disclose that the supercritical fluid is carbon dioxide. Chattopadhyay et al. disclose a method for continuously producing particles from an emulsion by supercritical fluid extraction (abstract). Chattopadhyay et al. teach that a supercritical fluid is preferably carbon dioxide ([0055]). It would have been obvious to one skilled in the art at the time of the invention to use carbon dioxide, as disclosed in Chattopadhyay et al., as the supercritical fluid in the invention of Daitch et al. in view of

Lee et al. (US 2002/0094318 A1) because carbon dioxide is a readily available gas and is less costly to obtain than other gases.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **SAEED M. HUDA** whose telephone number is (571)270-5514. The examiner can normally be reached on 8:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ Carlos Lopez/  
Primary Examiner, Art Unit 1791  
/SAEED M. HUDA/  
Examiner, Art Unit 1791